Tentative Rulings
DEPARTMENT 85 LAW AND MOTION RULINGS

Case Number: BS166500 **Hearing Date:** February 20, 2018 **Dept:** 85

Adrian Riskin v. Hollywood Property Owners Alliance, BS 166500

Tentative decision on petition for writ of mandate: granted in part

Petitioner Adrian Riskin ("Riskin") seeks a writ of mandate commanding Respondent Hollywood Property Owners Alliance ("HPOA") to release public records responsive to his requests. Riskin also seeks a determination that HPOA's Document Retention Policy is *ultra vires* and contravenes the California Public Records Act ("CPRA").
The court has read and considered the moving papers, opposition,[1][1] and reply, and renders the following tentative decision.

A. Statement of the Case
1. Petition
Petitioner Riskin commenced this proceeding on November 28, 2016. The operative pleading is the First Amended Petition ("FAP"), filed on May 5, 2017. The FAP alleges in pertinent part as follows.
In March 2016, Respondent HPOA instituted a Document Retention Policy pursuant to which it justifies withholding emails in its possession in response to requests for production of public records under the CPRA. FAP ¶6, Ex. A. The Document Retention Policy states that emails will be deleted after 90 days unless specifically retained. FAP ¶8. An email may be designated as an official record, and in that case it will be retained either in a hard copy format or in an organized electronic archival system. Id.
On March 17, 2016, Riskin made a CPRA request to HPOA seeking "all emails to or from anyone at the domain hollywoodbid.org, and the domains or any subdomains thereof of lacity.org, andrewsinternational.com, or hollywoodbid.org from January 1, 2016 through March 17, 2016" ("First HPOA Request"). FAP ¶10. On April 22 and April 28, 2016, HPOA provided 163 pages of records responsive to the First HPOA Request. Each of the emails produced were marked with the phrase "Archive for Records." FAP ¶12.
On April 23, 2016, Riskin sent a CPRA request to Dan Halden ("Halden Request"), the Hollywood field deputy for Los Angeles City Council District 13 ("District 13"). FAP ¶13, Ex. C. The request sought "emails between anyone at [District 13] and anyone at the domains hollywoodbid.org or andrewsinternational.com between January 1, 2016 and April 23, 2016." Id. Halden provided documents responsive to the Halden Request. FAP ¶15. Among these

1[1] The 16-page opposition exceeds the 15-page limit of CRC 3.1113(d). HPOA's counsel is admonished that the page limit does not mean 15 pages plus a signature page.

documents were dozens of emails from HPOA staff that had not been produced by HPOA even though they were responsive to the First HPOA Request. Id. These emails were not more than 90 days old at the time that HPOA processed the First HPOA Request and would not have been automatically deleted. FAP ¶16.

Among the emails produced by Halden is a February 10, 2016 email from HPOA's Executive Director Kerry Morrison ("Morrison"), and an April 1, 2016 email in which Morrison forwarded the February 10, 2016 email. FAP ¶17, Ex. D. The fact that Morrison was able to forward the February 10, 2016 email on April 1, 2016 shows that the email had not been deleted at the time that HPOA processed the First HPOA Request. FAP ¶19.

On April 21, 2016, Riskin made a CPRA request to HPOA for emails from April 1 through April 21, 2016 between HPOA staff and anyone at the domains hollywoodbid.org, lacity.org, andrewsinternational.com, ccala.org, and hollywoodchamber.net ("Second HPOA Request"). FAP ¶21, Ex. E. On June 23, 2016, HPOA produced emails responsive to this request, including the February 10, 2016 email that had not been produced in response to the First HPOA Request. FAP ¶23, Ex. F.

HPOA refuses to produce emails in its possession in response to CPRA requests that have not been marked as "Archive for Records." FAP ¶26. As set forth in the Document Retention Policy, HPOA's position is that only emails marked as official records are subject to disclosure. FAP ¶27.

On November 23, 2015, Riskin made a CPRA request to HPOA seeking emails for a specified period. FAP ¶28, Ex. G. On January 4, 2016, HPOA produced responsive emails in a format that involved printing the emails and then scanning the paper copies to PDF format. FAP ¶30. Riskin inquired as to why HPOA did not supply the emails in their native format pursuant to Government Code section 6253(a)(1). Id.

On January 6, 2016, Riskin requested two documents that had been attachments to emails in their native format ("Native Format Request"). FAP ¶31, Ex. H. One was in Microsoft Excel format, the other in Microsoft Word format. Id. HPOA did not produce the attachments in their native electronic format. FAP ¶33. On June 1, 2016, when Riskin followed up on the request, HPOA claimed that the scanned PDF version was equivalent to an excel spreadsheet. FAP ¶35.

Andrews' International, Inc. ("Andrews") is a private security operator which contracts with HPOA to provide security in the Hollywood area. FAP ¶36. The specific Andrews' unit which provides security for the HPOA is known as the Business Improvement Districts ("BID") Patrol. Id. Andrews produces a variety of documents related to its security services, including daily logs, arrest reports, photographs, videos, and bodycam recordings. FAP ¶39. Contracts between Andrews and HPOA in force from January 1, 2007 through June 15, 2016 stated that HPOA owned all of Andrews' work product related to the BID Patrols. FAP ¶40. Resultantly, HPOA regularly produced documents created by Andrews' BID Patrols in response to CPRA requests. Id.

On June 16, 2016, HPOA entered into a revised contract with Andrews whereby HPOA relinquished control and access to Andrews' work product. FAP ¶44, Ex. I. On August 29, 2016, Riskin requested "daily logs, arrest reports, photographs, videos, bodycam recordings, and audio recordings produced by" Andrews' BID Patrol from January 1, 2016 ("BID Patrol Request"). FAP ¶45, Ex. J. On September 15 and 19, 2016, HPOA produced documents responsive to the request, but failed to produce any daily logs, arrest reports, video recordings, or audio recordings. FAP ¶47. This failure includes all materials created before the date of the

revised contract. FAP ¶48.
On April 23, 2016, Riskin requested from HPOA a list of property owners in HPOA's BIDs ("Contact Information Request"). FAP ¶53, Ex. K. On May 20, 2016, HPOA provided only a list of property parcels in the BIDs and instructed Riskin to obtain the owner information himself from Los Angeles County ("County"). FAP ¶56, Ex. L. After Riskin objected, HPOA asserted that the contact information was exempt under the CPRA. FAP ¶58, Ex. M.
Petitioner seeks a writ of mandate under the CPRA to compel HPOA to release the records responsive to the First and Second HPOA Request, the Native Format Request, the Contact Information Request, and all pre-June 16, 2016 documents responsive to the BID Patrol Request. FAP ¶76. Petitioner additionally seeks a writ of mandate under CCP section 1085 against HPOA to declare the Document Retention Policy unlawful. FAP ¶78.

2. Course of Proceedings

On April 6, 2017, the court sustained Andrews' demurrer to the Petition. The court held that, as a private company, Andrews is not subject to the CPRA. Riskin was granted leave to amend the Petition to allege traditional mandamus to set aside all or a portion of the public contract, and include Andrews for that claim.
On September 12, 2017, the court sustained Andrews' demurrer to the FAP. The court held that Riskin had not alleged sufficient facts to demonstrate that the public contract was *ultra vires*, and as such Andrews was not a proper party to this action. The court further sustained in part HPOA's demurrer to the FAP. The court overruled the demurrer as to the second cause of action, and sustained the demurrer to the third cause of action.
On November 16, 2017, Riskin's motion for a protective order preventing HPOA from taking his deposition was granted in part. The court stated that Riskin could only be deposed in connection with requests, motives, and purpose.

B. Standard of Review

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085.
A traditional writ of mandate under CCP section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance. Id. at 584 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.
Where a duty is not ministerial and the agency has discretion, mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to

exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.
No administrative record is required for traditional mandamus to compel performance of a ministerial duty or as an abuse of discretion.

C. Governing Law

1. CPRA

The CPRA was enacted in 1968 to safeguard the accountability of government to the public. San Gabriel Tribune v. Superior Court, (1983) 143 Cal.App.3d 762, 771-72. Govt. Code[2][2] section 6250 declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The CPRA's purpose is to increase freedom of information by giving the public access to information in the possession of public agencies. CBS. Inc. v. Block, (1986) 42 Cal. 3d 646, 651. The CPRA was intended to safeguard the accountability of government to the public, and it makes public access to governmental records a fundamental right of citizenship. Wilson v. Superior Court, (1996) 51 Cal.App.4th 1136, 1141. This requires maximum disclosure of the conduct of government operations. California State University Fresno Assn., Inc. v. Superior Court, ("California State University") (2001) 90 Cal.App.4th 810, 823.
The CPRA makes clear that "every person" has a right to inspect any public record. §6253(a). The term "public record" is broadly defined to include "any writing containing information relating to the conduct of the people's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics. §6252(e). A public record is (1) a writing, (2) with content relating to the conduct of the public's business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency. City of San Jose v. Superior Court, ("City of San Jose") (2017) 2 Cal.5th 608, 617.
The right to inspect is subject to certain exemptions, which are narrowly construed. California State University, *supra*, 90 Cal.App.4th at 831. The exemptions are found in sections 6254 and 6255. The burden of demonstrating that exemptions apply lies with the governmental entity. §6255.
A CPRA claim to compel compliance with a public records request may proceed through mandamus or declaratory relief. §§ 6258, 6259. A petition for traditional mandamus is appropriate in actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085. Because the petitioner may proceed through either mandamus or declaratory relief, the trial court independently decides whether disclosure is required. *See* City of San Jose v. Superior Court, (1999) 74 Cal.App.4th 1008, 1018 (appellate court independently reviews trial court CPRA decision). No administrative record is required, and the parties must submit admissible evidence.

2[2]All further statutory references are to the Government Code unless expressly stated otherwise.

2. BIDs

A "Business Improvement District ("BID") is a defined area within a city created by petition of property owerns under the Pruoerpty and Business Improvement District Law of 1994 to self-fund and provide supplemental municipal services. Streets & Highway ("Sts. & Hy.") Code §36600 *et seq.* A city forming a BID must contract with a private non-profit entity identified as an "owners' association" to administer or implement improvements, maintenance, and activities specified in a management district plan. Sts. & Hy. Code §36612. Owners' associations levy assessments upon businesses or real property within the BIDs in order to fund these improvements. Sts. & Hy. Code §36601(c). Although not considered a public entity, owners' association must comply with the CPRA and the Brown Act. Sts. & Hy. Code §36612. The management district plans governing BIDs must state a specific number of years in which assessments will be levied. Sts. & Hy. Code §36622(h). The maximum number of years which the plan can specify is ten years. Id. Upon the plan's expiration, a new plan may be created and the district renewed. Sts. & Hy. Code §36630.

A BID may be disestablished by resolution of the city council if the city finds that there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district. Sts. & Hy. Code §36670(a)(1). A BID may also be disestablished upon written petition of the owners of real property in the district who pay 50% or more of the assessments levied if the petition is submitted in a certain 30-day period each year. Sts. & Hy. Code §36670(a)(2).

D. Statement of Facts[3][3]

1. Petitioner's Evidence

Motive Evidence

Petitioner Riskin publishes a freely available website and blog, michaelkohlhaas.org, where he details his investigations into the activities of HPOA and other property owners' associations and BIDs. Riskin Decl. ¶¶ 2, 3. Riskin publishes on the website the public records he obtains in response to CPRA requests. Riskin Decl. ¶2. The purpose of the website is to inform the public about the wrongdoings of HPOA and other property owners' associations, not to harass these groups. Id. To keep his blog interesting for readers, Riskin admittedly uses colorful and rhetorical language. Id.

Riskin has been contacted by documentary film makers, public interest attorneys, as well as students from University of California Berkeley School of Law's Policy Advocacy Clinic regarding using information on his website for their projects. Riskin Decl. ¶4.

For instance, Enrique Rivera ("Rivera") is a documentary filmmaker currently working on a documentary film about the Greater West Hollywood Food Coalition ("GWHFC"). Rivera Decl. ¶2. GWHFC is a charitable organization that feeds homeless residents of Los Angeles and operates within the boundaries of the Hollywood Media District BID. Rivera Decl. ¶3. Rivera found documents on Riskin's website that helped him gain a better understanding of the anti-GWHFC efforts of the Media District BID. Rivera Decl. ¶5. These documents included minutes of the Media BID's board meetings, email exchanges between the board members, and security logs by the BID's security force. Id.

John Malpede ("Malpede") is the founding director of the Los Angeles Poverty Department, an

3[3] The court has ruled on HPOA's written objections, interlineating the original evidence where an objection was sustained. HPOA's objection to the reply evidence is overruled.

art group for people living in Skid Row. Malpede Decl. ¶2. This group is concerned with offering cultural activities for the Skid Row neighborhood. Malpede Decl. ¶3. Malpede participated in the Skid Row Neighborhood Council election last April seeking to institute a government body that would increase residents' voices in the decisions being made about the neighborhood. Malpede Decl. ¶4. Malpede's constituency lost. Malpede Decl. ¶5. However, Riskin's research via CPRA requests brought some transparency to the situation as it showed that big developers and lobbyists organized against his group. Id. Without Riskin's help, Malpede's group would not have gleaned this information. Malpede Decl. ¶6.

Eric Ares ("Ares") is a deputy director of Finance and Communications at the Los Angeles Community Action Network ("LA CAN"), which is a community group that uses civic engagement and advocacy to help the impoverished in Los Angeles. Ares Decl. ¶2. Riskin's website has served as a critical resource for LA CAN on numerous occasions. Ares Decl. ¶3. The documents that Riskin makes available on his website have assisted LA CAN in its advocacy campaigns and community-lawyering projects, including litigation that focuses on protecting the civil rights of the homeless and impoverished. Ares Decl. ¶5. These documents shed light on the communications between the BIDs and the City regarding issues affecting LA CAN's members. Id. Without Riskin's website, LA CAN would likely not have access to these documents. Ares Decl. ¶7.

Riskin believes that homeless residents of Hollywood are subject to pervasive harassment by BID Patrol officers. Riskin Decl. ¶7. Riskin began learning about HPOA and making records requests because of his concern for the homeless. Riskin Decl. ¶8.

First HPOA Request

On March 17, 2016, Riskin made the First HPOA Request seeking from HPOA "all emails to or from anyone at the domain hollywoodbid.org, and the domains or any subdomains thereof of lacity.org, andrewsinternational.com, or hollywoodbid.org from January 1, 2016 through March 17, 2016." Riskin Decl. ¶9, Ex. 2. On April 22 and April 28, 2016, HPOA provided 163 pages of records responsive to the First HPOA Request. Each of the emails produced were marked with the phrase "Archive for Records." Riskin Decl. ¶10.

Riskin emailed Morrison to inquire why HPOA had not provided a record that he had obtained from the City of Los Angeles ("City") which showed that the City had emailed Morrison. Riskin Decl. ¶11, Ex. 2. Morrison did not respond. Riskin Decl. ¶12.

On April 23, 2016, Riskin sent the Halden Request. Riskin Decl. ¶13, Ex. 3. The request sought emails between District 13 and anyone at HPOA between January 1, 2016 and April 23, 2016. Id. On May 20, 2016, Halden provided documents responsive to the Halden Request. Riskin Decl. ¶14. Among these documents were dozens of emails from HPOA staff that had not previously been produced, even though they were responsive to the First HPOA Request. Id.

Among the records produced by Halden is a string of emails dated February 18 and 19, 2016 between Morrison and Halden. Riskin Decl. ¶15, Ex. 4, pp. 36-38. Also among the records produced is a February 10, 2016 email from Morrison to Halden, and an April 1, 2016 email in which Morrison forwarded the February 10, 2016 email. Riskin ¶18, Ex. 4, pp. 10-12.

On May 20, 2016, Riskin emailed Morrison asking why HPOA had not provided these emails which were responsive to the First HPOA Request. Riskin Decl. ¶¶ 16, 19, Exs. 5, 6. Morrison did not reply. Riskin Decl. ¶¶ 17, 20.

Second HPOA Request

On April 21, 2016, Riskin made the Second HPOA Request seeking emails from April 1 through April 21, 2016 between HPOA staff and anyone at the domains hollywoodbid.org, lacity.org, andrewsinternational.com, ccala.org, and hollywoodchamber.net. Riskin Decl. ¶21, Ex. 7. On June 23, 2016, HPOA produced emails responsive to this request, including the February 10, 2016 email that had not been produced in response to the First HPOA Request. Riskin Decl. ¶22, Ex. 8.

BID Patrol Request

Prior to June 15, 2016, HPOA regularly produced daily logs, arrest reports, photographs, videos, and body-camera recordings created by Andrews' BID Patrols in response to Riskin's CPRA requests. Riskin Decl. ¶23.

On August 29, 2016, Riskin made the BID Patrol Request seeking "daily logs, arrest reports, photographs, videos, bodycam recordings, and audio recordings produced by" Andrews' BID Patrol from January 1, 2016 to the present. Riskin Decl. ¶24, Ex. 9. On September 15 and 19, 2016, HPOA produced some documents responsive to the request, but failed to produce any daily logs, arrest reports, video recordings, or audio recordings. Riskin Decl. ¶25.

Native Format Request

On November 23, 2015, Riskin made a CPRA request to HPOA seeking emails between the HPOA or Central Hollywood Coalition and the Hollywood Chamber between January 1 and June 30, 2015 as well as emails sent or received by the HPOA staff and Andrews staff from January 1 through September 30, 2014 and from November 13 to December 31, 2014. Riskin Decl. ¶26, Ex. 10.

On January 5, 2016, HPOA produced responsive emails in a PDF format that showed that the records were first printed and then scanned, as opposed to being converted directly from the native format to PDF. Riskin Decl. ¶27, Ex. 11.

On January 6, 2016, Riskin made the Native Format Request seeking two documents that had been attachments to emails in the records produced on January 5, 2016 in their native format. Riskin Decl. ¶28, Ex. 12. One should have been sent in Microsoft Excel format, and the other in Microsoft Word format. Id. Receiving no response, Riskin sent Morrison follow-up emails on April 26, 2016 and June 1, 2016. Riskin Decl. ¶¶ 30-31, Ex. 13-14. On June 9, 2015, Morrison responded with an attachment providing the data in the wrong format. Riskin Decl. ¶32, Ex. 15. On the same date, Riskin responded to Morrison that he was seeking the two documents in their native formats. Riskin Decl. ¶33, Ex. 16. Riskin did not receive a response. Riskin Decl. ¶34. Riskin sent a follow-up email on June 15, 2016 which received no response. Riskin Decl. ¶¶ 35-36, Ex. 17.

Contact Information Request

On April 23, 2016, Riskin sent the Contact Information Request seeking from HPOA a list of assessed properties in each of the two HPOA BIDs and contact information for the properties' owners. Riskin Decl. ¶40, Ex. 18. On May 20, 2016, HPOA provided Riskin with records responsive to his request, but HPOA failed to provide Riskin with the contact information that he sought. Riskin Decl. ¶¶ 42-43, Exs. 19-20. On the same day, Riskin responded that HPOA had failed to provide the contact information. Riskin Decl. ¶44, Ex. 21. On June 7, 2016, Morrison claimed exemptions for the contact information. Riskin Decl. ¶45, Ex. 22. On the

same day, Riskin responded that he believed none of the exemptions should apply and requested HPOA to reconsider its position. Riskin Decl. ¶46, Ex. 23. Riskin did not receive a reply. Riskin Decl. ¶47.

2. Respondent's Evidence

Background

Morrison is the Executive Director of HPOA. Morrison Decl. ¶1. HPOA is a private, non-profit corporation that administers two BIDs in Hollywood: (1) the Hollywood Entertainment District BID and (2) the Sunset & Vine BID. Morrison Decl. ¶3. HPOA currently employs five staff members who are responsible for managing BIDs and responding to concerns and inquiries from 650 property owners. Id. Among other responsibilities, Morrison manages HPOA's responses to CPRA requests. Id.

BIDs are primarily funded by self-assessments paid by property owners, and, in turn, the HPOA provides services to these owners which the City is unable to. Morrison Decl. ¶4. These assessment funds are not endless. Id. HPOA funds that are used to respond to CPRA requests become unavailable for other services that the BIDs are required to provide. Id. HPOA contracts with a security vendor, Andrews, and, pursuant to this contract, Andrews patrols the neighborhood, responds to calls from businesses for services, maintains a visible presence to deter crime, partners with local law enforcement, and assists homeless individuals. Morrison Decl. ¶8.

Riskin's Blog

Morrison discovered Riskin's blog in October 2014. Morrison Decl. ¶12. Riskin initially denied writing the blog, which appeared to have multiple authors, but later admitted in his deposition that he is the sole author. Morrison Decl. ¶¶14-15. The blog uses profanity and personal attacks, and seems intended more to intimidate and harass people than offer legitimate criticism of the work of the BIDs which HPOA manages. Morrison Decl. ¶13. Morrison is mentioned in dozens of blog posts and her picture has appeared on the blog 39 times. Id. Morrison considers Riskin's deception about his authorship of the blog, all the while using profane language and making personal attacks on HPOA staff, family members, and contractors, to be bad faith. Morrison Decl. ¶15. Morrison considers Riskin's tactics to be cyber-bullying as he refers to her as a "white supremacist," "Nazi," "thug," and "disciple of Satan." Morrison Decl. ¶16.

For instance, in a blog post dated December 20, 2016, Riskin discussed Morrison's husband who is not affiliated with HPOA. Morrison Decl. ¶17. Riskin also mentioned Morrison's neighborhood and her family's religious beliefs. Id. Morrison thinks that this post was an attempt to intimidate her into silence and constitutes an unwarranted personal attack on her family. Id.

On June 14, 2016, Riskin wrote a post titled "How to Destroy a Business Improvement District in California: A Theory." Morrison Decl. ¶18. The post included an image of a mushroom cloud with a caption reading, "This would be an effective, emotionally satisfying, and poetically just way to get rid of business improvement districts." Id. This post unnerved Morrison and made her fear for her safety. Id.

Burden on HPOA From Riskin's CPRA Requests

Since October 2014, Riskin has propounded 147 CPRA requests on HPOA and sent over 600

emails. Morrison Decl. ¶21. Some of Riskin's CPRA requests sought discrete categories of records requiring a few minutes of time to satisfy, while others requested broad categories of documents that made it difficult for staff to quickly collect documents and return to their other tasks. Morrison Decl. ¶22. For example, Morrison estimates that Riskin's January 8, 2015 CPRA request for emails sent to or from Hollywoodbid.org in 2014 required the production of approximately 172,500 emails. Morrison Decl. ¶23. Riskin eventually rescinded this request. Id.

Because the documents sought by Riskin often contain sensitive information, Morrison has sought assistance from attorneys. Morrison Decl. ¶24. From 2014 to 2017, HPOA spent approximately $28,400 on legal services to review Riskin's requests and prepare responses. Id. Morrison estimates that HPOA staff has spent collectively over 150 hours searching computers and email accounts for records pursuant to Riskin's CPRA requests. Morrison Decl. ¶25.

Burden on the City From Riskin's CPRA Requests

From January through November 2016, Riskin has sent the City more than 5,000 emails containing approximately 800 CPRA demands. Edward Decl. ¶3. The volume of requests the City received from Riskin steadily increased over the course of the year. Edward Decl. ¶4. This number of requests became overly burdensome for the City, and significantly limited its ability of the City to fulfill its other responsibilities to its constituents. Id.

On November 10, 2016, the City sent Riskin a letter establishing a procedure for the receipt and processing of his pending and future CPRA requests. Edward Decl. ¶5, Ex. A. Each City department now spends no more than one hour per week on his requests, and the departments collectively now spend no more than twelve hours per week on his requests. Id.

HPOA's Document Retention Policy (First and Second CPRA Requests)

The HPOA created the Document Retention Policy on March 17, 2016. Morrison Decl. ¶26. The reason for doing so was staff efficiency -- including efficiency concerns stemming from Riskin's CPRA requests. Id. Pursuant to the Document Retention Policy, emails are considered "transitory documents" unless they are archived as records. Morrison Decl. ¶27. Morrison only saves those documents (1) which pertain to HPOA's business, (2) which HPOA is required to maintain by law and its contract with the City, and (3) which HPOA staff might want to refer to in the future. Id.

It would be unduly burdensome to require HPOA staff to retain every email received in anticipation of a CPRA request. Morrison Decl. ¶28. HPOA staff would run out of storage space. Id. The staff thus does not retain emails which appear to have no future use. Id. Morrison disagrees with Riskin's assertion that HPOA is unlawfully withholding documents as evidenced by the fact that the City produced documents which mention HPOA while HPOA did not produce the same documents. Morrison Decl. ¶29. The City might choose to retain records which HPOA does not keep because the City has more resources and a broader mission. Id. Morrison likely deleted the particular example cited by Riskin because HPOA's mission is more limited and the email did not fall within its parameters. Id.

Morrison also disagrees with Riskin's assertion that HPOA intentionally withheld a record which it produced in a later request but not in an initial one. Morrison Decl. ¶31. Morrison believes that she may have made a mistake. Id.

BID Patrol Request

HPOA does not possess or own the Andrews records that Riskin seeks in this lawsuit. Morrison Decl. ¶32. These are not records that HPOA has ever used, consulted, or had reason to review. Id. The only documents which Andrews gives HPOA are monthly reports that summarize common issues that BID Patrol officers encounter. Morrison Decl. ¶33. These monthly reports were provided to Riskin on August 29, 2016. Id.

HPOA's initial contract with Andrews in 2013 gave ownership of Andrews' work product to HPOA because of a dispute which HPOA had faced with a previous security vendor. Morrison Decl. ¶34. HPOA did not have a business need for the documents. Id. When Riskin sought Andrews' work product prior to the contract's amendment, Morrison believed that the documents were public records that had to be produced because HPOA owned them. Morrison Decl. ¶35. Because HPOA did not have Andrews' work product in its files, HPOA worked with Andrews to produce responsive records. Id. HPOA via Andrews ultimately produced more than 58,000 digital files and records and sent them to Riskin pursuant to this request. Id. Thus, in January 2015, Riskin requested all photographs produced in performance of Andrews' contractual obligations to HPOA. Morrison Decl. ¶36. This request required finding photographs taken back in 2007. Id. Andrews and HPOA worked a span of seven months to produce 30,555 files responsive to this request. Id. Likewise, in November 2015, Riskin sought all of Andrews' BID Patrol arrest reports. Morrison Decl. ¶37. This request took seven months to fulfill and it produced over 28,000 files. Id. Andrews billed HPOA $19,500 for the 300 hours which it spent compiling these records. Id.

After producing these records, Morrison learned that an online seller was selling compilations of photographs of persons arrested by the BID Patrol. Morrison Decl. ¶38. Morrison suspected the seller was Riskin. Id. Regardless, the sale of these photographs raised concerns about the invasion of privacy of people depicted in them. Id. HPOA subsequently decided to reevaluate the terms of its contract with Andrews. Id. HPOA amended its contract to clarify that HPOA only retained ownership over portions of Andrews' work product whose ownership is necessary to manage the BIDs. Morrison Decl. ¶39.

Native Format Request

HPOA's usual practice is to print, scan, and save documents as PDF when HPOA determines that an electronic document is a public record. Morrison Decl. ¶41. When HPOA responded to Riskin's November 23, 2015 CPRA request, it produced PDF versions for scanned documents in accordance with Riskin's instructions that PDF's were acceptable. Id.

On January 6, 2015, Riskin made the Native Format Request seeking two files in their native versions. Morrison Decl. ¶42. Morrison did not recall receiving this request and suspects that she inadvertently overlooked it. Id. HPOA no longer owns native versions of these documents. Morrison Decl. ¶44.

Contact Information Request

In response to the Contact Information Request, HPOA produced documents which include those Riskin attached as Exibits 19 and 20 to his declaration. Morrison Decl. ¶45. These are the same lists provided to property owerns when they receive the official Management Dsitrict Plan for the BID. Id.

When Risk sought more documents, Morrison responded that HPOA considered its list of property owners exempt from production under the CPRA. Morrison Decl. ¶46. This list is actually a subset of owners and other contacts, which is HPOA's proprietary information that

helps it perform its services. Id. The list contains sensitive information about people who own or manage businesses in Hollywood, including non-public email addresses of emergency contacts, non-public cell phone numbers to use in an emergency, and information about employees that the businesses would prefer not to be public. Morrison Decl. ¶47. HPOA gathered much of this information from business owners on the condition that it would remain private. Id. This is not the "official" contact list that HPOA uses to send communications to property owners. Id.

E. Analysis

Petitioner Riskin seeks a writ under the CPRA commanding HPOA to release records responsive to the First and Second HPOA Request, BID Patrol Request, Native Format Request, and the Contact Information Request. Riskin also seeks a determination that HPOA's Document Retention Policy is *ultra vires* and contravenes the CPRA.

1. Motive

The parties discuss Riskin's motives because the court previously stated that HPOA's contention that Riskin is a vexatious CPRA requester might be an equitable defense. Opp. at 13.

HPOA correctly states the elements of abuse of process as (1) the use of an ulterior motive in using the court process, and (2) a willful act in the use of the process that is not proper in the regular course of proceedings. Rusheen v. Choen, (2006) 37 Cal.4th 1048, 1057. Opp. at 13-14.

HPOA describes Riskin's blog as making personal attacks against HPOA personnel, including noting Morrison's religious beliefs and calling her a disciple of the devil. This causes HPOA's staff to fear for their safety. Opp. at 4. Riskin sells and posts on his blog photographs of people the BID Patrol encounters, some homeless and mentally ill, and he posts Youtube videos of BID Patrol officers interacting with the public. Opp. at 14. Riskin's blog admits that one of its essential purposes is to needle HPOA's employees and supporters of BIDs, and he concedes that neither educating nor convincing anyone of anything is a huge priority. Dunn Decl. Ex, F.

Riskin's moving papers describe his blog as using "rhetoric, calls to action, and colorful language." Pet. Op. Br. at 4. HPOA argues that Riskin views CPRA requests as a means of draining BID resources to force them to breach their contracts with the City, which might lead to their disestablishment. Opp. at 14. HPOA concludes that the court should conclude that Riskin seeks the documents at issue to make profane personal attacks on HPOA's staff and to induce HPOA to breach its contract with the City. HPOA contends that, at a minimum, the court should deny Riskin access to private contact data of the businesses HPOA exists to serve. Opp. at 15.

Applying the abuse of court process elements by analogy to a theoretical abuse of CPRA process, HPOA has not established its claim. The court cannot conclude that Riskin's motive of needling HPOA employees in his blog is by itself unlawful or even inequitable. The key fact is that Riskin has not taken any action to personally confront or harass HPOA employees; he has only posted disparaging information in a blog. The internet is full of unsupported and unwarranted contentions, and Riskin's blog falls in the realm of a probably harmless, and possibly useless, screed. The situation would be different if Riskin made harassing emails or personal confrontations.

Nor has Riskin done anything in the CPRA requesting process that is not proper. Although HPOA contends that Riskin is attempting to drain its resources with his requests, the evidence by HPOA shows only that Riskin believes HPOA breaches its City contract it has insufficient resources to timely respond to CPRA requests. Dunn Ex. A, p. 165. The testimony does not support a conclusion that Riskin wants to drain HPOA resources by making requests; it only shows that Riskin does not believe HPOA has enough staff to timely respond to his requests. Nor does Riskin's high volume of requests to HPOA by itself show an intent to drain resources. Indeed, HPOA's evidence shows that Riskin also has made a high volume of requests to the City, and no one believes that he can drain the City's resources.

HPOA is not without remedies. It has taken actions to minimize the burden of Riskin's requests by adopting the Document Retention Policy and the amended Andrews contract. It may take other actions such as setting up a specific protocol for Riskin as the City has done. HPOA can also file a separate declaratory relief action against Riskin, seeking an injunction against his CPRA requests. But HPOA has not met its affirmative burden of showing an equitable defense against production of public records in this case.

2. <u>Ultra Vires (First and Second CPRA Requests)</u>

HPOA's Document Retention Policy (sometimes, the "Policy") reads as follows:

> E-mail messages are generally considered "transitory" documents (works-in-progress), and therefore are not records of the Association and are not subject to the Association's minimum records retention requirements. This is because Association emails are automatically deleted after 90 days, unless specifically retained. However, particularly important e-mail messages may be official records. An official record is generally defined as any writing or record of an event or information that was made or retained for the purpose of preserving its information content for future reference.
>
> E-mails that are official records are subject to the Association's records retention schedule and may be subject to disclosure in response to a request for public records. They should be retained by one of the following means: (1) printed out and maintained in the respective department filing system as a paper document; or (2) retained electronically in an organized electronic archival system established and maintained by the organization. E-mails that are not official records should be retained no more than 90 days. The Association automatically deletes e-mails not retained in an archival system.
> Strugar Decl. Ex. 2, p.7.

Petitioner Riskin contends that the Document Retention Policy is *ultra vires*. Pet. Op. Br. at 7. This argument relates to HPOA's failure to produce all emails sought in the First and Second HPOA Requests. Morrison admitted in her deposition that HPOA does not produce transitory documents, and only produces emails marked "Archive for Records". Strugar Decl. Ex 1, p. 58. Riskin initially argues that the Policy's labeling of emails presumptively transitory and therefore not public records is unlawful. Pet. Op. Br. at 5-6. He notes that every email produced to him by HPOA was marked "Archive for Records" (*i.e.,* an acknowledged public record). According to Riskin, section 6252(e) -- which defines "public records" -- does not

distinguish between "transitory" and "official" records and provides no provision whereby an entity subject to CPRA can declare a type of document presumptively not a public record. Pet. Op. Br. at 7. Riskin cites to a circumstance in which the City produced a February 10, 2016 email that HPOA had not produced. Then HPOA forwarded the email to the City after Riskin's request. Pet. Op. Br. at 6.

HPOA argues that CPRA allows agencies to "define their 'public records.'" Ciyt of San Jose, *supra*, 2 Cal.5th at 618-19. According to Morrison, she treats the Document Retention Policy like she treats paper communications that arrive in her in-basket. Morrison Decl. ¶27. She does not archive every personal communication or junk mail. Id. She saves only those documents (1) which pertain to HPOA's business, (2) which HPOA is required to maintain by law and its contract with the City, and (3) which HPOA staff might want to refer to in the future. Morrison Decl. ¶27. She has also trained each HPOA employee on the requirements of the Document Retention Policy. Id.

HPOA argues that agencies with more resources (the City) may chose to retain more emails than those with fewer resources (HPOA). Opp. at 6. The fact that the City produced a document not produced by HPOA does not support an inference that HPOA is withholding records. Different agencies receiving the same document may make different decisions on whether to retain it, and the court may not control this discretionary discretion. Id. There is no evidence that HPOA is withholding emails sought by Riskin; Opp. at 7.

There is nothing wrong with the Document Retention Policy. As HPOA argues, the CPRA is not a document retention statute. Los Angeles Police Department v. Superior Court, (1977) 65 Cal.App.3d 661, 668. While other statutes impose document retention requirements on some public agencies, HPOA is not one of them. Opp. at 6-7. HPOA is not considered a public entity, and need only comply with the CPRA and the Brown Act. Sts. & Hy. Code §36612. Thus, HPOA is free to adopt whatever document retention policy it wants.

Moreover, the Document Retention Policy is a good faith effort to only keep emails that concern HPOA's business. A "public record" under section 6252(e) is: (1) a writing, (2) with content relating to the conduct of the public's business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency. City of San Jose, *supra*, 2 Cal.5th at 617. For the second requirement – content relating to the public's business -- it is not always clear whether a writing is related to public business. Id. at 618. "Resolution of this question, particularly when writings are kept in personal accounts, involves an examination of several factors, including the content itself, the context in, or purpose for which it was written; the audience to whom it was directed; and whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment." Id. In general, the writing must relate in some substantive way to the conduct of the public's business. Id. This standard is not so broad as to include every piece of information which the public may find interesting. Id.

San Jose implicitly demonstrates that agencies subject to CPRA possess discretion in determining what a public record is. For instance, an entity may choose to withhold primarily personal emails. San Jose, *supra*, 2 Cal. 5th at 618. The Document Retention Policy's distinction between transitory and official (i.e., "particularly important email messages") is an attempt to track the second requirement, which distinguishes between content relating to the conduct of the public's business and content not doing so. Morrison explanation that she saves three broad categories of emails — one of which is all documents pertaining to the business of HPOA — illustrates that HPOA is not deleting emails "relat[ing] in some substantive way to

the conduct of the public's business." The Document Retention Policy is therefore not *ultra vires* as a matter of law.

Riskin must prevail in one respect. He clarifies that he is not attacking HPOA's failure to retain emails more than 90 days, but rather contends that HPOA must produce emails if they have been retained when the CPRA request is made. Reply at 4. The court agrees insofar as Riskin is seeking a search of these retained emails. HPOA is entitled to view most emails as transitory and not public records, disposing of them after 90 days under the Policy. Once a request is made, however, HPOA is not free to ignore the ostensibly transitory emails it has retained, either because they are not 90 days old or because HPOA has yet to delete them. HPOA must search those emails in the same way that it searches other documents.

HPOA argues that Riskin wants it to produce every email it receives, regardless of whether it sufficiently relates to HPOA's business. Opp. at 12. If that is true, Riskin is in error. HPOA does not necessarily have to produce the retained emails, but it must search them. The fact that HPOA initially marked the email as transitory and not "Archive for Records" indicates that HPOA believed the email was not a public record. Yet, as HPOA itself argues, "the status of a document can change over time". Opp. at 13. That is correct. An email initially viewed as transitory and subject to deletion may be viewed in a different light in the context of a record request.

In sum, HPOA's Document Retention Policy is not *ultra vires*. HPOA is free to mark emails as "Archive for Records" and discard the rest after 90 days. HPOA must search the initially marked transitory emails when it receives a CPRA request, and may not rely on its initial assessment of the email as transitory and then fail to search it. If this practice creates a burden, HPOA should ensure that it deletes emails immediately after the 90th day pursuant to the Policy.

3. BID Patrol Request

Petitioner Riskin contends that HPOA wrongfully refused to produce records pursuant to the BID Patrol Request. Pet. Op. Br. at 8. While Andrews owns its work product created after June 16, 2016, the work product created from January 1 to the June 16, 2016 is still owned by HPOA. Pet. Op. Br. at 9. Under the CPRA, an agency possesses public records if it actually or constructively possesses it. City of San Jose, *supra*, 2 Cal.5th at 623. According to Riskin, HPOA still owns these records, they are public records, and they should be produced. Id. There is no retroactive conversion of HPOA's records into Andrews' private property. Pet. Op. Br. at 10.

HPOA argues that has no business purpose for the Andrews work product. Opp. at 7. In hindsight, it was a mistake for Morrison to initially recover work product from Andrews pursuant to Riskin's CPRA request. No law prevents HPOA from revisiting the issue and it did not retain ownership over the Andrews' pre-amendment work product. Opp. at 8. Nor does it possess any of those documents. Id.

The original Agreement in a section titled "Ownership of Work Product" states: "All drawings, specifications, reports, records, documents, photographs, field investigation cards, logs, arrest reports, and other material prepared by [Andrews] in the performance of this Agreement shall be the property of [HPOA] and shall be delivered to [HPOA] upon [HPOA's] request or upon termination of the Agreement." Strugar Decl. Ex. 3, p. 3.

The amended Agreement ("Amendment") flips this language: "All [work product] prepared by [Andrews] in the performance of this [Amendment] shall be the property of [Andrews].

[Andrews] shall be the sole owner of such work product….." Stugar Decl. Ex. 4, pp. 4-5. The Amendment provides that Andrews owns its work product prepared by it "in the performance of the Agreement." As a temporal fact, Andrews cannot prepare work product in performing the Agreement until after the June 16, 2016 date that the Amendment was executed. While the parties could have so agreed, there is no language in the Amendment that Andrews owns the work product previously owned by HPOA. *See* Cobb v. Ironwood Country Club, (2015) 233 Cal.App.4th 960, 967.

HPOA previously owned and constructively possessed Andrews' work product, and produced it upon request. It must do so again for the work product it still owns that is in Andrews' possession.

San Jose warns that an entity subject to the CPRA cannot evade its disclosure duty by transferring custody of a record to a private holder and then arguing that the record falls outside CPRA because it is no longer in the entity's possession. San Jose, *supra*, 2 Cal.5th at 623. Morrison proposed the Amendment in part because she wanted to resolve "privacy and intellectual property issues resulting from producing those documents [to Riskin] as public records under the CPRA". HPOA could have transferred ownership of work product existing on June 16. 2016 if the amendment expressly did so. It did not.

HPOA contends that San Jose is distinguishable because HPOA has no business purpose in retaining the materials and never used or retained them. Opp. at 8. In the initial Agreement, HPOA did have a business purpose in retaining these materials since they related to the work being performed by the BID Patrol *on behalf of* HPOA. HPOA changed its mind, as it is entitled to do, but it still owns the work product prepared before the Amendment.[4][4]

HPOA must recover the BID Patrol Request documents in Andrews' possession created before June 16, 2016 and not previously produced.

3. Native Format Request

Petitioner Riskin contends that HPOA wrongfully refuses to produce records in response to the Native Format Request. Pet. Op. Br. at 10.

Agencies are required to make information available in any electronic format in which it holds the information. §6259.3(a)(1). The agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use. §6259(a)(2). The agency is not required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format. §6259(c).

Riskin contends that HPOA violated section 6253.9(a)(1) by producing the documents in the "physical-to-PDF format" because Riskin asked for their native formats (in this case, Excel and Word) and HPOA retained possession of these documents in such native formats. Pet. Op. Br. at 11.

As HPOA contends (Opp. at 8-9), this request is moot. HPOA no longer possess these documents in their native formats and there is nothing HPOA can produce. Dunn Decl. Ex. B, pp. 89-90; Morrison Decl. ¶44.

Riskin asks that the court find that HPOA violated the CPRA by failing to produce these documents in their native format. *See* Fairely v. Superior Court, (1998) 66 Cal.App.4th 1414,

4[4] Riskin argues that the court's ruling in his favor on demurrer is the law of the case. Reply at 6. This is incorrect. The law of the case doctrine applies only to appellate decisions. A trial court ruling on demurrer does not make findings applicable to the entire case.

1417. Riskin sent the Native Format Request on November 23, 2015, and HPOA may have possessed these two documents in their native format when it processed the request on January 5, 2016 and when Riskin sent a follow-up email explicitly requesting them in such format on January 6, 2016. Riskin Decl. ¶¶ 27, 28, Exs. 11-12.

Riskin has not shown that HPOA did have these documents in their native formats when he requested them. HPOA's customary practice is to print, scan, and save a public record as a PDF. Morrison Decl. ¶41. The two documents were almost two years old when HPOA produced them. Riskin Decl. Ex. 11. At the time of the January 5, 2016 production, HPOA may have only been able to produce these documents in a physical-to-PDF format.

Assuming that HPOA had these documents in their native format on January 6, 2016, Riskin still has not shown that HPOA violated section 6259.3(a)(1). Morrison mistakenly overlooked Riskin's email, and this mistake is excusable. On January 5 and 6, Morrison had 40 Riskin requests before her. She responded to seven on those two days. Morrison Decl. ¶43. When Morrison answered Riskin's reminder in April 2016, she excusably had not produced the two emails. By then, HPOA no longer had the native formats for these documents. Morrison Decl. ¶44.

HPOA did not violate the CPRA for the Native Format Request.

4. Contact Information Request

Riskin contends that HPOA wrongfully refuses to produce records of contact information for BID Property Owners. Pet. Op. Br. at 12. At the time of the request, HPOA asserted that these records were exempt pursuant to sections 6254(c), 6254(k), 6254.3, 6254.21, and 6255(a). Riskin Decl. Ex. 22. HPOA now only relies on section 6255(a).

Section 6255(a) exempts records if the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

Riskin contends that there is a public interest in lobbying the business owners to disestablish or not renew the BID. Pet. Op. Br. at 14; Strugar Supp. Decl. Ex. 1, p. 140. Riskin contends that the information's availability to property owners upon request undermines HPOA's asserted privacy interests. Id.

In relevant part, Morrison's declaration where she states that the contact information list sought contains "sensitive information about people who own and manage businesses in Hollywood that are assessed by the BIDs and includes non-public email addresses of persons to contact in an emergency, non-public cell phone numbers to use in an emergency, and information about employees that assessed business owners would prefer not be made public." Morrison Decl. ¶47. HPOA gathered this information from the owners on the condition that the information remain private. Id.

HPOA argues that it provided Riskin with the current official record of the ownership of BID properties, and he appears bent on harassing these property owners if HPOA's proprietary contact information is released. Opp. at 9-10. This information is non-public – including non-public email addresses, cell phone numbers, and employee identifications -- and gathered on the condition that it would remain private. Opp. at 10. HPOA contends section 6255(a) protects privacy, and Riskin intends to use this information to disestablish the BIDs, not through lobbying, but via intimidation and harassment. Id. at 10. HPOA contends that if this data were released, these individuals would likely have to change their email addresses and phone numbers to avoid harassment. Id.

Morrison's declaration is simply too non-specific and vague. Morrison's declaration fails to

show that this entire list should be excluded on the basis of a vague and unquantified amount of sensitive information. Morrison also fails to show why the sensitive information is "of a highly personal nature." HPOA has not shown that the entire list should be shielded on the basis that some entries may contain confidential information.

To some extent, Riskin also rebuts HPOA's contention that he will misuse this information. Riskin points out that there are over 1000 property owners and obtaining this contact information from the County Assessor's office would be an undue burden. Reply at 7. There is insufficient evidence that Riskin would attempt to disestablish the BIDs through intimidation and harassment of property owners. Riskin states that he can use this contact information to write requests to these property owners to encourage them to vote against renewal of the BIDs. Strugar Supp. Ex. 1, p.140. The basis for this request is that he believes that the BIDs waste money and engage in "mission creep." Id. Arguably, Riskin's actions serve or attempt to serve the public interest. HPOA had the burden of showing that section 6255(a) applies and has not met this burden. *See* §6255.

Despite this conclusion, the court must protect the privacy rights of individuals. Based on his blog, there is a risk that Riskin will harass these business owners. There is a public interest in non-disclosure of individual person email addresses, phone numbers, and employee identifications which outweighs any public interest in disclosure. This personal information generally may be redacted in the record disclosed to Riskin. There is no privacy right for a business, and a business entity's name, mailing address, phone number, and email address must be produced. An exception to the general rule of non-disclosure also exists for individual persons who are property owners; these names are readily available at the County Recorder's Office. The name and mailing address of an individual property owner must be produced, but not their phone number or email address.

F. Conclusion

The writ of mandate is granted in part. HPOA is ordered to conduct a search of retained emails for purposes of HPOA First and Second Request, produce records responsive to Riskin's BID Patrol Request, and produce a redacted version of the documents sought in the Contact Information Request. The Document Retention Policy is not *ultra vires*, and the Native Format Request is denied as moot.

Riskin's counsel is ordered to prepare a proposed writ and judgment, serve it on HPOA's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for April 5, 2018 at 9:30 a.m.